INTUG response on the ERG public consultation on a draft Common Position on symmetry of mobile/fixed call termination rates

1. Introduction and preliminary comments

The International Telecommunications Users Group (INTUG) welcomes the current ERG public consultation on a draft Common Position on symmetry of mobile/fixed call termination rates.

INTUG has represented enterprise users of telecommunications throughout the world since 1974. It consists of national user associations in every continent, including in many EU Member States, which represent enterprise users within their own country.

INTUG notes that ERG states that many NRA's did not reach the real cost level for MTR's yet. INTUG urges ERG to first look at the general absolute value of the MTR's: it is more important an MTR's decrease from more or less on average 10 cents to 2-5 times the FTR's, than whether one operator is allowed to have a 10% or 25% asymmetry on the lowest rate in a country. Even without being at the real cost level, some mobile operators are allowed to increase their MTR with the inflation rate. INTUG considers this out of proportion. In some countries, this could lead to an increase of MTR's, instead of the decrease path envisaged by everybody.

Although ERG puts forward that the absolute value of the rates and the cost modeling would only come in a second and third step in the analysis, INTUG welcomes the fact that these questions are already partially addressed in the present consultation document.

INTUG supports that MTR values should be linked to the costs relevant to an efficient operator and not simply defined by NRAs on the basis of a benchmark based on other NRA's decisions.

ERG rightly points out that the very heterogeneous situations in countries are caused by the fact that NRA's imposed different price control remedies or a different specification of the same remedy to SMP operators. When different cost analysis tools and methodologies lead to heterogeneous cost references, convergence is needed. Therefore INTUG urges ERG to start the new project team focusing on the harmonisation of methods used by national regulatory authorities to implement the cost orientation remedy regarding mobile termination rates.

INTUG is in favour of symmetric TR's whenever possible. Asymmetry can only be justified by exogenous cost differences imposed on the operator (different license conditions, differentiated conditions of spectrum allocation, …) or temporarily at late entrance. INTUG can live with the maximum duration of 4 to 5 years, as put forward by the ERG in its upcoming consultation.

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2. Questions within the consultation document

1. General ERG questions

QUESTION G1: Do you think that the principles outlined in the general economic introduction cover adequately the underlying economic situation of both mobile and fixed termination markets?
o If yes, do you think they are sufficiently reflected in the two parts on "MTR symmetry" and "FTR symmetry" and that they are consistently applying the principles?
or If no, what do you think is missing and which reasoning should be added?

The introduction outlines very well the economic principles that tend to recommend a unique and uniform TR and the possible temporary exceptions on that rule. The introduction describes well the possible adverse consequences of the CPP (calling party pays) model regarding incentives for operators to determine the height of their TR and to reduce their costs.

The introduction could highlight more the fact that (not cost oriented) asymmetric TR's can be detrimental for the market position of smaller operators due to the on-net/off-net price differentials that create a net outflow of traffic for smaller operators. This in the case where (M)TRs of incumbents/entrants are not yet regulated to cost.

Therefore we do not agree with the ERG position that justifies asymmetry for a transitory period, before MTRs are at a cost level. ERG points forward that cumulative circumstances to sustain this vision of justified transitory asymmetry are high traffic imbalances, MTs tariffs significantly above MTR costs, and NRA analysis that benefits of asymmetry outweigh any short term disadvantages of doing so. Through this, NRA's are even more pushing operators towards on-net offers, element seen by NRA's as a sign of disfunctioning competition and the need to keep an eye on the mobile retail market (Market 15).

While in the fixed part, it is clearly outlined that each operator has SMP in the provision of termination services on his network requiring the imposition of price controls, this is not as clearly mentioned in the mobile part.

QUESTION G2: Any further comments regarding consistent regulation of both MTR and FTR with regard to symmetry is welcome.

No specific further comments at this stage.

QUESTION G3: Finally we would like to ask you to elaborate on the question of converging MTR and FTRs and the timeframe you envisage for this.

It is clear that MTR's could reduce to more or less the level of FTR's, with the following focus points:
- the traffic incomes on mobile networks increased substantially and are now higher than traffic incomes on fixed networks in some countries
- the current costing methodologies between FTR and MTR are quite different
- the current distortion that the access part is paid by the customer in the fixed world (via his subscription fee), which is not the case in the mobile world. Where there is no need to abandon the CPP principle, one could think of a more fair way to invoice the mobile end user for the possibility that he can be reached wherever he wants.
- Mobile operators should only put the 'voice' network costs on the MTR. A lot of the current investments are done for other services like internet connectivity, videotelephony, mobile TV,…

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- high MTR's forcing companies to make use of alternatives to reach mobile users (e.g. mobile retail market alternative via SIMBOX)
- Cyprus having an MTR of around 2 eurocents per minute

INTUG urges the ERG to rapidly come to MTR’s that are really cost oriented. Where cost differences and licence obligations call for higher costs for MTR, these should be taken into account.

Converging fixed-mobile offerings are currently not sustainable due to the high MTR’s. Where lowering this is the start of the solution, one should be careful to not harm the incentives for operators to come with a seamless fixed-mobile convergence offering.

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2. Fixed part

ERG common position: ERG proposes that those NRAs that are currently not setting symmetric FTRs should do so within a reasonable period of time.

QUESTION F1: How do you think termination should be regulated in a converging fixed- mobile market?

See answer G3

QUESTION F2: Do you agree on the methodology and assumptions underlying the asymmetry index calculation?

The asymmetry index calculation gives a good view on the difference between countries. However, this should not be taken as a srtict measure, as some assumptions are always debatable.

QUESTION F3: Do you think the list in paragraph 7.1 constitutes an exhaustive list of the possible reasons justifying the adoption of asymmetric tariffs?

No comment.

QUESTION F4: Do you agree on the fact that any entry assistance policy for the future based on higher OAOs' FTRs is likely to be less effective than in the past?

Entry assistance policies should put emphasis on taking away bottlenecks. Large asymmetries in the past already caused market distortions, where small asymmetries (10-25% difference with the incumbent) have little chance of really helping out OAO's. therefore the asymmetry entry assistance policy could be best abandoned.

QUESTION F5: Could you please provide a definition of the "efficient operator" NRAs should refer to in fixing FTRs? What are the costs an efficient operator would incur to provide termination services?

An efficient operator is the one offering good quality services at the lowest cost to final users, without loosing money and without infringing competition rules. Regional operators can be efficient without having a 5% market share in a country.
Costs to be considered for FTR determination should be limited to those required for voice services, only.

QUESTION F6: Do you agree on the fact that OAOs should be as efficient as the incumbent?

They should strive to be efficient, and can thus be even more efficient than the incumbent. That does not withstand that it is possible that OAO's have higher unit costs in the beginning. Putting TRs substantially higher however leads to arbitrages that are in the long run to the detriment of the whole sector.

QUESTION F7: Do you agree on the fact that there are less reasons for fixed operators compared to mobile operators that justify the adoption of asymmetric tariffs?

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Yes, because fixed operators normally have less licence conditions, so this argument is not relevant. The distortion effect of substantially asymmetric tariffs however also holds in the mobile market (even more through more generalized on-net practices)

QUESTION F8: Do you agree on the fact that if all call termination charges were based strictly on incurred costs there would be a distortion of competition?

Yes. If one operator, through being more efficient, were able to deliver calls more cheaply than another, the operator benefiting from this efficiency and lower cost would not be the more efficient operator which has reduced termination costs, but the less efficient operator since it is buying the cheaper call termination service. The less efficient operator would therefore gain a competitive advantage.

QUESTION F9: Do you agree on the fact that symmetric tariffs would allow to avoid transaction and regulatory costs?

Yes, but it is more important to analyse the effects (a)symmetry has on the market.

QUESTION F10: Do you agree on the fact that NRA's should reach symmetry in fixed termination tariffs within a reasonable period of time?

Yes.

QUESTION F11: Do you agree that it would be reasonable for NRAs to allow a transition period to move to symmetric FTRs? How long should this transition period be?

A transition period is reasonable. A lot of countries are however already a couple of years with asymmetry. Transition periods should not exceed 3 years (starting from the moment asymmetry was introduced); the situation should at least be fully re-analysed after 3 years.

QUESTION F12: In your opinion what criterion should NRAs adopt to set the glide path?

End result should best be the incumbent TR.

QUESTION F13: As the length of the glide path is a controversial point, in your opinion, should the time period to reach symmetry be the same for all NRAs or should each NRA determine it according to national circumstances?

Each NRA can determine this according to national circumstances. Transition periods should not exceed 3 years (starting from the moment asymmetry was introduced); the situation should at least be fully re-analysed after 3 years.

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3. Mobile part

INTUG recalls that the current high general absolute value of MTR's is more crucial than the possible effects of reasonable asymmetry between mobile operator.

QUESTION M1: Do you agree with the general principle promoting symmetry: "Termination rates should normally be symmetric"?

Yes. Exception being exogenous factors,.

QUESTION M2: Do you agree with the exception to take into account exogenous cost differences: "asymmetry is only acceptable to take into account exogenous factors, outside the control of operators"? The only example, which is not related to a late entrance, identified by ERG is cost differences due to the spectrum licensing holdings. Can you identify other exogenous factors?

- Yes.
- No other exogenous factors at national level.

QUESTION M3: Do you agree with the following principle: "Assuming that cost differences due to different spectrum allocation are properly evaluated, they may justify an asymmetry"?

Yes.

Transitory exception to take into account a significantly late entrance:

QUESTION M4: Do you agree with the following principle: "If the level of competition in the mobile retail market asks for measures which create incentives for new network level entry or measures that strengthen the position of small new entrants, substantial differences in the date of market entry can justify an asymmetry for a transitory period"?

INTUG does not agree in the case the MTR's are not yet at cost level. As traffic is not in balance due to on-net offers, it is clear that small mobile operators could subsidize more bigger mobile operators than vice-versa. Subsidization from fixed users does not help either.
If the MTR is set at cost level and the regulator takes appropriate measures so that on-net tariffing does not give rise to competition distortions, reasonable asymmetry could be used for a transitory period,

QUESTION M5: Do you agree with the principle of keeping the level of asymmetry "reasonable"?

In case an asymmetry would be justified (see question 2/3/4), this asymmetry should be reasonable.

QUESTION M6: Do you agree with the fact that an initial level should be accompanied by a glide path towards symmetry?

Yes, the market needs to know how the TR's would evolve in the next 2-3 years.

QUESTION M7: Do you agree with the fact that national factors should be taken into account to evaluate the length of the transition period?

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Yes

Transitory exception before MTRs are at cost, to limit distortions created by MTRs above costs:

QUESTION M8: Do you agree that in specific market circumstances (MTRs tariffs are significantly above MTR costs, there are high traffic imbalances between mobile operators and benefits of a transitory asymmetry outweigh any short term disadvantages of doing so), a temporary asymmetry may limit competitive distortions?

The fact that it is temporary certainly limits the risk; however it is more important to look at whether on-net pricing offers are generalized within a country or not. If they are generalized, then asymmetry can be a disadvantage for small operators.

QUESTION M9: Do you agree that NRAs should first try to set MTRs at costs?

Yes. INTUG notes that ERG states that many NRA's did not reach the real cost level for MTR's yet. INTUG urges ERG to first look at the general absolute value of the MTR's: it is more important that the MTR's decrease from more or less on average 10 cents to 2-5 times the FTR's, than whether one operator is allowed to have a 10% or 25% asymmetry on the lowest rate in a country. Even without being at the real cost level, some mobile operators are allowed to increase their MTR with the inflation rate. INTUG considers this out of proportion. In some countries, this could lead to an increase of MTR's, instead of the decrease path envisaged by everybody.

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